REMARKS

All claims, including unamended independent claim 16 have been finally rejected as obvious over a newly cited reference, U.S. Patent No. 6,039,688 to Douglas et al. Finality is respectfully traversed based on the fact that the new ground of rejection was not necessitated by Applicant's amendment of the claims.

The Douglas patent relates to a therapeutic behavior modification program, compliance monitoring and feedback system. Participation in the Douglas program is voluntary on the part of the patient and physician. The Douglas program is designed to monitor complex health and lifestyle issues with personal oversight by the physician or case advisor. The physician initially places the patient in the program. Col. 6, lines 7-16. Automatic notification goes to the physician or case advisor by e-mail, facsimile or page if a health risk is present. Col. 10, lines 17-26. The timing of health risk alarms, by their nature are not fixed.

The method as claimed in independent claim 1 is for using the internet, an electronic system and database to provide automatic notification of the identity of Non-Immigrant Visa Holders admitted to the country who have failed to report after a fixed time. In contrast to the Douglas et al. system, the initial enrollment of the Non-Immigrant Visa Holder is not voluntary. The detection of reporting failures and visa overstays does not require human intervention. This is one of the features of the claimed invention which makes rapid deployment possible and highly desirable given the serious threat of terrorism posed by individuals who violate immigration laws.

The stored data of pending independent apparatus claim 20 is not some amorphous mass of health-related information and therapeutic recommendations as in Douglas. Rather, the information central to the functioning of the present system is identity and timing information. The onus of data entry and reporting after admission into the country is placed on the Non-Immigrant Visa holder or visitor, not Immigration authorities. Taking this approach, embodiments of the present system could be implemented quickly with existing computers, Internet technology and internet terminals to keep track of large numbers of Non-Immigrant Visa Holders, without creating a large bureaucracy or infrastructure.

In contrast to the Douglas program, in the claimed methods, the information collection and reporting schedules can be triggered by the timing of a single event (entry into the country) rather than by a voluntary decision by a patient to participate in a self help program and report symptoms. Although there are behavior modification techniques which can be practiced with the disclosed system, the goal of independent claims 1, 16 and 20 is identifying Non-Immigrant Visa holders or visitors who have failed to make timely reports and notifying the appropriate authority. The result of such identification, will in many cases, be apprehension and deportation.

Thus, the Douglas patent clearly does not anticipate the claimed invention. In evaluating the subject matter "as a whole" of the new claims as required under 35 U.S.C. § 103, it should first be noted that the claimed subject matter is wholly different in context and form from the Douglas program. There is no basis for concluding that it is analogous prior art. In detail the claimed steps differ from the Douglas program in numerous ways:

Non-Immigrant Visa holders and visitors are not patients; admission to the country is not a discretionary enrollment in a program by a physician; the timing of the admission and immigration reporting requirements are not the same or analogous to a medical history; the automated identification of individuals who failed to make timely reports is not the same as a subjective evaluation of whether a health risk is present; automatic notification to a responsible governmental enforcement body and to another body or individual such as an employer is not the same as the alarm notification of a doctor of a health risk; etc.

The Examiner has taken the position that the claim language "Non-Immigrant Visa Holders" is not required to be considered because it is contained within the pre-amble of the claim. To eliminate any uncertainty in this matter, claims 1, 3, 5-7, 11, 12, 14, 15, 20, 23-27, and 31 have been amended to insert this full terminology in the body of the claims. The amendment is not believed to be a narrowing amendment in view of the fact that the word "user" previously appeared in the body of the claims and was defined as a Non-Immigrant Visa Holder.

Under U.S. law "Non-Immigrant Visa Holder" is a person with formal permission to stay in the U.S. for a limited period of time, such as persons on a student visa. As discussed in the specification, this is a particular class of high risk individuals about whom data is generated.

The Examiner has objected to the term "visas" as used in independent claims 1, 16 and 20. More specifically, the Examiner has taken the position that the term is "functional claim language and not necessary to the system and/or method steps claimed, i.e., the term 'visas' is considered 'information' or 'data' not necessary to the operation of the system as

claimed." Applicant respectfully disagrees. The term "visa" signifies a formal permission for a visitor to enter the U.S. and, thus, helps to identify the class of individual with which the inventions are concerned. The term "visa" also relates to specific data regarding identity, timing and duration of permitted stay, without which the system cannot function. If the time and term of admission is unknown, how can a visa overstay be identified? The notion of visa as a class of data or information is not only necessary, but essential to the operation of the invention. Further, the assertion that the term "visa" has a functional connotation is not a proper basis for ignoring claim language containing the term. A patent applicant is free to recite features of an apparatus either structurally or functionally. See In re Swinehart, 439 F.2d 210, 212, 169 USPQ 226, 228 (CCPA 1971). In re Gulach cited by the Examiner does not hold to the contrary. As to the method claims presented, step or actions are the essence of that form of claiming.

In view of the foregoing, the claims are believed to be patentable over the prior art.

In the event that there are any questions relating to this Amendment, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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